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UNCLAS HARARE 000174

SIPDIS

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AF/PD FOR D. FOLEY, C. DALTON
NSC FOR SENIOR AFRICA DIRECTOR J. FRAZER, D. TEITELBAUM
LONDON FOR C. GURNEY
PARIS FOR C. NEARY
NAIROBI FOR T. PFLAUMER

SENSITIVE

1E. O. 12958: N/A

TAGS: PHUM PGOV KPAO ZI

SUBJECT: COURT CONSOLIDATES GOZ APPEAL AND DAILY NEWS
CONSTITUTIONAL CHALLENGE, DEFERS DECISION

REF: (A) HARARE 128 (B) HARARE 61 AND PREVIOUS

1. (U) SUMMARY: After two days of hearings, Supreme Court Chief Justice Godfrey Chidyausiku on January 28 consolidated the Associated Newspapers of Zimbabwe's (ANZ, parent company of The Daily News) and the Media and Information Commission's (MIC) appeal of lower court decisions permitting publication of The Daily News (TDN). Chidyausiku deferred decision until January 30 on the GOZ's application for an order prohibiting publication of TDN pending resolution of other matters, and scheduled a purportedly final hearing for February 18 on constitutional and other dispositive issues. END SUMMARY

2. (U) Lawyers for the GOZ's Media and Information Commission (MIC) presented their case to Justice Chidyausiku on January 27. The MIC sought an order on two issues: (1) to consolidate all the Supreme Court applications into one action, and (2) to order TDN to cease publication on the grounds that it lacked a license. ANZ attorney Mordecai Mahlangu told the embassy on January 28 that both parties agreed to consolidate the matters into one Supreme Court case.

3. (U) On January 28, Justice Chidyausiku agreed to consolidate the MIC appeal from the Administrative Court as well as the constitutional challenge brought by the ANZ. On September 11, 2003, the Supreme Court had refused to hear the ANZ constitutional challenge (reftels), ordering that the ANZ apply for registration before they could challenge the constitutionality of the Access to Information and Protection of Privacy Act (AIPPA). ANZ submitted its application for registration on September 15 but the MIC denied the application

4. (U) With agreement of the parties, Chidyausiku on January 28 scheduled the case to be heard February 18 in the Supreme Court. The MIC asked Chidyausiku to provide it with an order barring the Daily News from publishing until the matter was resolved on February 18. ANZ attorneys opposed this application and Chidyausiku agreed to allow them to file opposing briefs by January 30.

5. (SBU) The government-controlled Herald's January 29 edition reported the resignation and departure to South Africa of Administrative Court Judge Michael Majuru. Sitting on an earlier iteration of the ANZ case in November, Majuru had supported the legal position of the ANZ but recused himself following government media allegations of improper favoritism and the reported commencement of an investigation against him. In a related development, principals of the weeklies Independent and Standard recently confided to emboffs that they feared GOZ-ordered closure of their publications within weeks.

6. (SBU) COMMENT: The Herald's front page treatment of Majuru's removal from the scene evinces the GOZ's continuing designs against the independence of both the judiciary and the press. While the demise of the Independent and Standard may not prove as imminent as feared by some, it seems clear that the GOZ's war on the independent media will not end on January 30 or February 18, regardless of how the Chief Justice decides the issues before him.